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November 15, 2007

**VIA HAND DELIVERY AND ECFS**

**REDACTED – FOR PUBLIC INSPECTION**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation in WC Docket No. 06-172

Dear Ms. Dortch:

On November 15, 2007, Angela Simpson of Covad Communications Group, Lisa R. Youngers of XO Communications LLC, and Brad E. Mutschelknaus and Genevieve Morelli of Kelley Drye & Warren LLP, met with Jeremy Miller, Nicholas Alexander and Denise Coca of the Wireline Competition Bureau. At the meeting, the parties demonstrated that data submitted in the above-referenced proceeding before the Commission does not demonstrate significant levels of facilities-based competition within any of the Metropolitan Statistical Areas subject to the Verizon Petitions. The attached presentation was distributed at the meeting.

Please note, this *ex parte* filing is redacted for public inspection, in accordance with the terms of the Second Protective Order in the above-referenced proceeding.<sup>1</sup> As required by the Second Protective Order, unredacted copies of the same have been delivered to the Commission Secretary, and to Gary Remondino of the Wireline Competition Bureau, under separate cover.

<sup>1</sup> *In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, WC Docket No. 06-172, Order, DA 07-208 (rel. Jan. 25, 2007) ("Second Protective Order").*

KELLEY DRYE & WARREN LLP

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
November 15, 2007  
Page Two

Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions, or require further information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett Heather Freedson". The signature is fluid and cursive, with the first name "Brett" and last name "Freedson" clearly distinguishable.

Brett Heather Freedson

cc (via email): Jeremy Miller  
Tim Stelzig  
Nicholas Alexander  
Denise Coca

# **DATA DEMONSTRATING THE INSIGNIFICANCE OF FACILITIES-BASED COMPETITION IN VERIZON UNE FORBEARANCE MARKETS**

A solid red rectangular block used for redaction, positioned below the title and above the date.

**Thursday, November 15, 2007**

**Presentation Sponsored by  
Covad Communications and  
XO Communications**

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## EVEN THE LARGEST FACILITIES-BASED CLECs REACH VERY FEW BUILDINGS

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- ❑ XO Connects to Only 142 Buildings in the Markets at Issue

MSA	GeoResults Number of XO Lit Buildings <sup>1/</sup>	Confirmed Number of XO Lit Buildings
Boston	34	24
New York	50	53
Philadelphia	40	50
Pittsburgh	7	15
<b>Total</b>	<b>131</b>	<b>142</b>

<sup>1/</sup> XO's and Verizon's GeoResults data is different for each of these markets. This is likely attributable in part to the timing of the GeoResults data dip performed for each company. Also, XO had its figures scrubbed and produced by GeoResults whereas it is our understanding that Verizon arrived at its figures by accessing the underlying database itself. For purposes of this table, XO used the higher of the two GeoResults figures for each market.

# EVEN THE LARGEST FACILITIES-BASED CLECs REACH VERY FEW BUILDINGS (cont'd)

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- ❑ XO Loop Facilities Reach a De Minimis Percentage of Commercial Buildings

MSA	Commercial Buildings	Confirmed Number of XO Lit Buildings	% Commercial XO Lit Buildings
Boston	192,227	24	0.01%
New York	446,122	53	0.01%
Philadelphia	217,725	50	0.02%
Pittsburgh	85,694	15	0.01%
Providence	56,927	0	0%
Virginia Beach	72,229	0	0%
<b>Total</b>	1,070,924	142	0.01%

- ❑ One Communications has Deployed Loop Facilities to Only **\*\*BEGIN CONFIDENTIAL [ ] END CONFIDENTIAL\*\*** Customer Locations
- ❑ Time Warner Telecom's Experience is Similar – It Connects to Only **\*\*BEGIN CONFIDENTIAL [ ] END CONFIDENTIAL\*\*** Buildings

# VERIZON'S DATA MISREPRESENTS THE INCIDENCE OF CLEC LIT BUILDINGS – GROSS MISCOUNTING OF QWEST LOCATIONS DISTORTS VERIZON'S DATA

**\*\*\*BEGIN CONFIDENTIAL**

MSA	Verizon's Number of Qwest Lit Buildings	Qwest's Wholesale List of On-Net Buildings <sup>1/</sup>	GeoResults' Number of Qwest Lit Buildings
Boston			
New York			
Philadelphia			
Pittsburgh			
Providence			
Virginia Beach			
<b>Total</b>			

1/ These figures include carrier hotels, as well as addresses to which Qwest makes available no DS0, DS1 or DS3 services. If these addresses were backed-out, the totals would be substantially lower.

**END CONFIDENTIAL \*\*\***

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# THE CORRECT INCIDENCE OF CLEC LIT BUILDINGS IS AS FOLLOWS

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- Use of GeoResults Data Corrects Two Flaws in Verizon's Data: Over-Reporting and Double-Counting

**\*\*\*BEGIN CONFIDENTIAL**

MSA	VZ Reported "Carrier-Building Instances"	GeoResults CLEC <i>Lit Buildings</i> (including MCI)
Boston		
New York		
Philadelphia		
Pittsburgh		
Providence		
Virginia Beach		
<b>Total</b>		

**END CONFIDENTIAL \*\*\***

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## **GEORESULTS DATA CONFIRMS THAT ALL FACILITIES-BASED CLECS *IN THE AGGREGATE* DO NOT CONNECT TO A SIGNIFICANT PORTION OF COMMERCIAL BUILDINGS**

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<b>MSA</b>	<b>Commercial Buildings</b>	<b>Commercial CLEC Lit Buildings</b>	<b>% Commercial CLEC Lit Buildings (including MCI)</b>
Boston	192,227	234	0.12%
New York	446,122	429	0.09%
Philadelphia	217,725	320	0.14%
Pittsburgh	85,694	162	0.18%
Providence	56,927	233	0.40%
Virginia Beach	72,229	1,395	1.9%
<b>Total</b>	1,070,924	2,773	0.25%

# **MANY WIRE CENTERS HAVE *NO COMMERCIAL BUILDINGS* CONNECTED TO CLEC FIBER**

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<b>MSA</b>	<b>Number of Wire Centers</b>	<b>Number of Wire Centers With No CLEC Lit Fiber</b>	<b>% of Wire Centers With No CLEC Lit Fiber</b>
Boston	131	69	53%
New York	115	52	45%
Philadelphia	156	78	50%
Pittsburgh	149	114	77%
Providence	33	11	33%
Virginia Beach	58	16	28%

# **IN FACT, FACILITIES-BASED CLECS DO NOT CONNECT TO A SIGNIFICANT PORTION OF COMMERCIAL BUILDINGS IN ANY *INDIVIDUAL WIRE CENTER***

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<b>Wire Centers in Each MSA With Highest % of CLEC Lit Buildings</b>	<b>Commercial Buildings</b>	<b>Commercial CLEC Lit Buildings</b>	<b>% Commercial CLEC Lit Buildings</b>
Boston WLHMAWE	1,007	15	1.49%
New York NYCMNYBS	4,008	44	1.07%
Philadelphia PHLAPALO	4,676	32	0.68%
Pittsburgh PITBPADT	4,137	45	1.09%
Providence PRVDRIWA	8,129	79	0.97%
Virginia Beach NRFLVABL	1,654	71	4.29%

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## **FACILITIES-BASED CLECS CANNOT CONNECT TO SUBSTANTIALLY MORE COMMERCIAL BUILDINGS WITHIN A COMMERCIALLY REASONABLE TIME**

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<b>MSA</b>	<b>% of Total Commercial Buildings Within 500 ft. of XO facilities</b>	<b>% Within 1000 ft.</b>
Boston	0.7%	1.6%
New York	1.9%	4.2%
Philadelphia	2.7%	6.0%
Pittsburgh	0.8%	1.7%

# CABLE TELEPHONY MARKET PENETRATION FALLS FAR SHORT OF THE LEVEL THAT EXISTED IN OMAHA

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- The Cable Penetration Levels in the Six Verizon Markets Range from Less Than  $\frac{1}{4}$  to  $\frac{1}{2}$  of Levels Found in Omaha
- Using E911 Data Filed by Verizon, We Estimated the *Maximum Potential* Cable Market Penetration in Each Market at Issue

\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*

Market	Residential	Business	Combined
Boston			
New York			
Philadelphia			
Pittsburgh			
Providence			
Virginia Beach			

\*\*\*END HIGHLY CONFIDENTIAL\*\*\*

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# THESE ESTIMATES ARE CONFIRMED BY DATA ACTUALLY FILED BY CABLE COMPANIES

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\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*

Market	Cable Companies	Residential	Business	Combined
Boston	Comcast*/Charter			
New York	Time Warner Comcast Cablevision**			
Philadelphia	Comcast			
Pittsburgh	Comcast			
Providence	Cox/Comcast			
Virginia Beach	Cox***			

\*\*\*END HIGHLY CONFIDENTIAL\*\*\*

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\* Comcast data may include some small business lines.

\*\* Cablevision data not yet available.

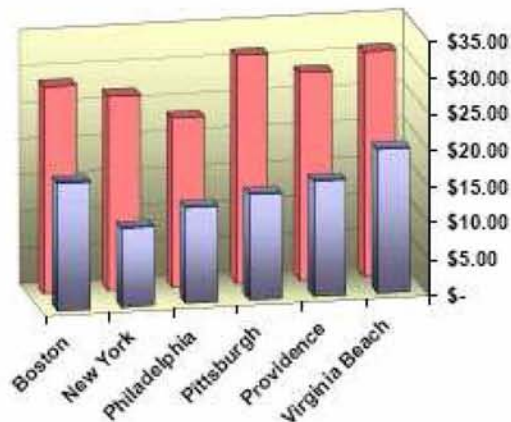
\*\*\* Cox data for Virginia Beach not yet available.

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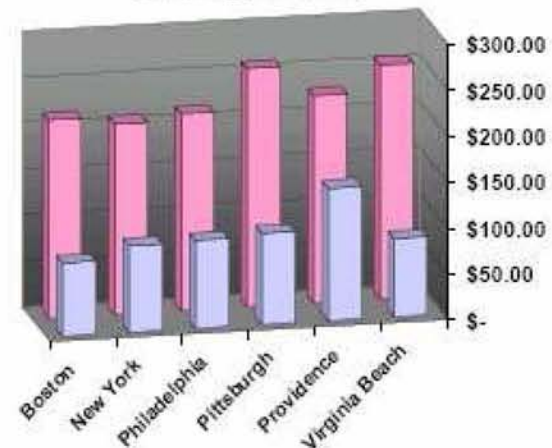
# GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS

2 Wire Analog Loops:  
UNE Cost and Cost if Forbearance is Granted  
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$17.65	\$10.90	\$13.36	\$14.58	\$15.97	\$19.86
Cost if Forbearance is Granted	\$28.58	\$26.76	\$23.28	\$31.45	\$28.58	\$31.01

DS1 Loops:  
UNE Cost and Cost if Forbearance is Granted  
(Recurring per Month)

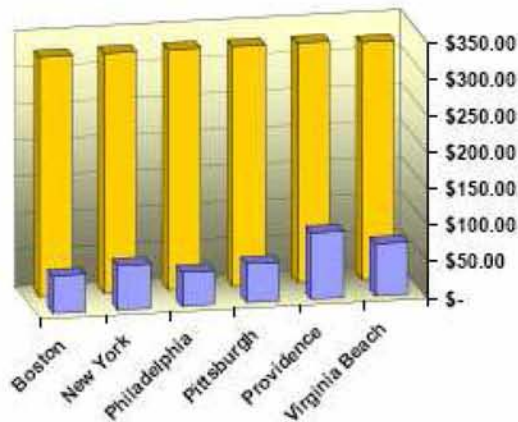


	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$80.17	\$94.66	\$96.00	\$96.71	\$146.11	\$86.47
Cost if Forbearance is Granted	\$216.85	\$207.71	\$214.25	\$259.35	\$225.68	\$265.69

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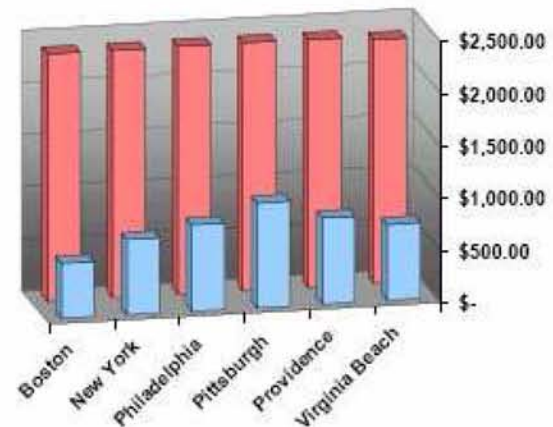
# GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS (cont'd)

**DS1 Transport:**  
UNE Cost and Cost if Forbearance is Granted  
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$51.30	\$60.57	\$47.23	\$53.46	\$91.44	\$71.04
Cost if Forbearance is Granted	\$328.70	\$328.70	\$328.70	\$328.70	\$328.70	\$324.07

**DS3 Transport:**  
UNE Cost and Cost if Forbearance is Granted  
(Recurring per Month)

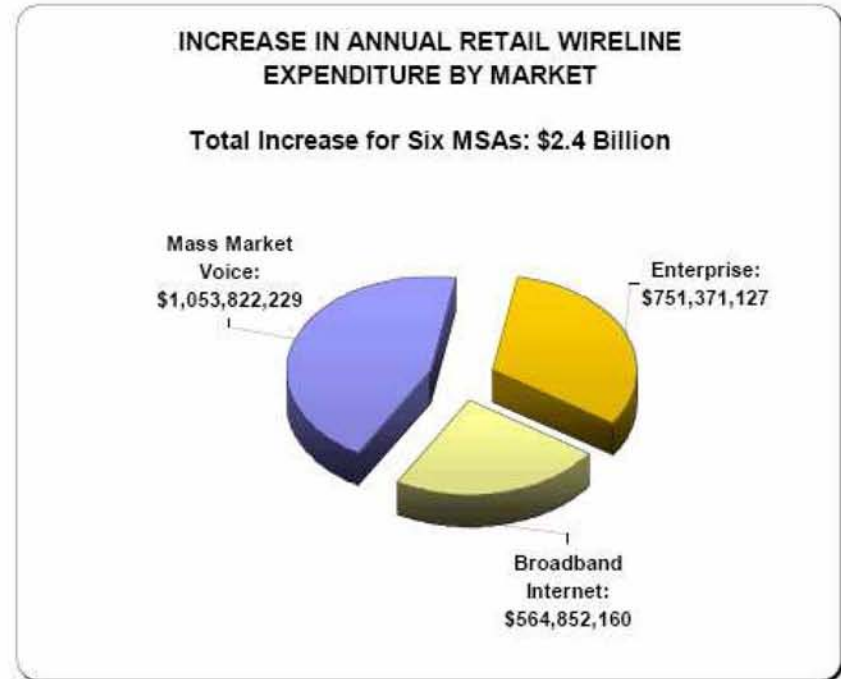
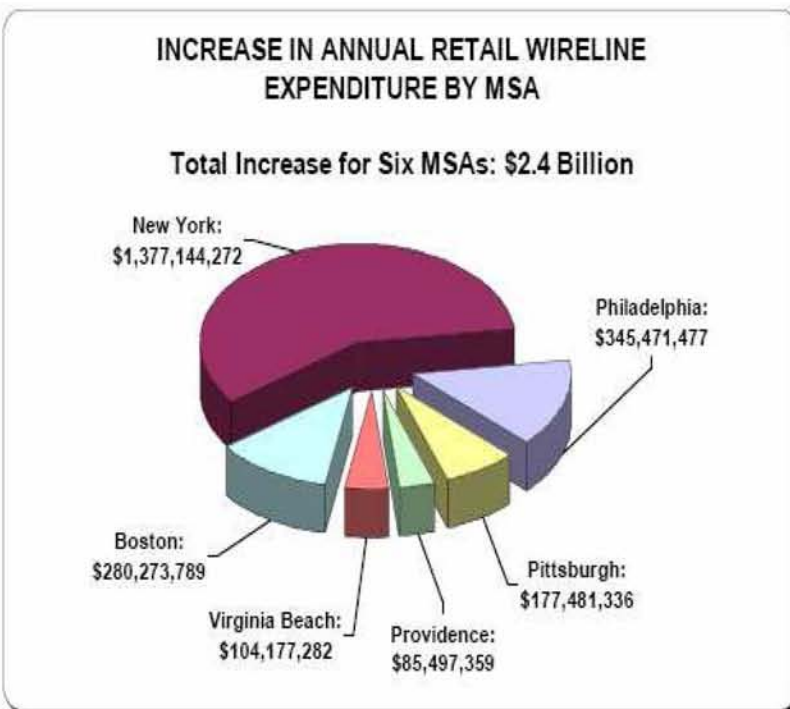


	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$527.12	\$722.14	\$632.24	\$1,005.78	\$627.69	\$730.76
Cost if Forbearance is Granted	\$2,375.30	\$2,375.30	\$2,375.30	\$2,375.30	\$2,375.30	\$2,341.85

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# AS RETAIL CARRIERS PASS THROUGH INCREASED WHOLESALE COSTS, GRANTING VERIZON'S PETITIONS WOULD RESULT IN:

- ❑ *\$2.4 Billion* Increase in Telecom Expenditures



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# AS RETAIL CARRIERS PASS THROUGH INCREASED WHOLESALE COSTS, GRANTING VERIZON'S PETITIONS WOULD RESULT IN:

- 24% Increase in Residential Wireline Bills

Relative Increase in Residential Annual Retail Expenditures

MSA	Residential Voice and Broadband Internet	
	Annual Increase per Household	% Residential Wireline Expenditure
Boston	\$ 92	20%
New York	\$ 132	28%
Philadelphia	\$ 87	19%
Pittsburgh	\$ 120	26%
Providence	\$ 96	20%
Virginia Beach	\$ 84	17%
Combined 6 MSAs	\$ 114	24%

Relative Increase in Total Annual Retail Expenditures

MSA	Total Voice and Broadband as % Total Retail Wireline Revenues
Boston	11%
New York	13%
Philadelphia	11%
Pittsburgh	15%
Providence	11%
Virginia Beach	12%
Combined 6 MSAs	13%

- AT&T's Recent Rate Increase in VA is Directly Attributable to the Loss of DSO UNEs (UNE-P) There <sup>1/</sup>

1/ Petition of AT&T Communications of Virginia, LLC for Approval to Exceed Price Ceilings, PUC-2007-00090 (VA SCC, filed Oct. 12, 2007).

## **THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION**

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- "...Enterprise users such as federal agencies need more competition for retail services...there are several indications that actual competition is inadequate."
- "...competition has not been sufficient to limit Verizon's pricing power...Verizon has been increasing its rates...."
- " If there were strong competition, as Verizon contends, the company would not be increasing its prices...."
- "...the quality of Verizon's services has been deficient. If there were strong competition, as Verizon asserts, the company would be forced to maintain high quality services so that customers do not switch...."
- "...intermodal competition often has a number of major shortcomings, especially for business users."

## **THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION (cont'd)**

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- “ Verizon’s recent actions to increase charges for services to its business users, particularly in the New York City area where competition should be the most intense, show that the company still has a great deal of market power throughout its service area.”
  - “ ...there is not much wireline competition as federal agencies would like in order to help control telecommunications prices.”
  - “ By any reasonable standard, [Verizon] has great market power.”
  - “ ...wireline competition has not been increasing. Indeed, for the first half of 2006, there was a decline in the amount of competition in New York State....”
  - “ ...it is unlikely that wireline competition will increase much in the near future...mergers have eliminated alternative suppliers of telecommunications services.”
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## **THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION (cont'd)**

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- “ Deficiencies in the quality of Verizon’s services in New York State also show that competition has been inadequate.”
- “ ...for the vast majority of business subscribers in the State of New York, intermodal telecommunications services do not represent a viable substitute for the traditional landline offerings of the incumbent...and...do nothing to diminish or constrain the market power of [Verizon].”
- “ ...services offered by cable companies are often not a significant part of the competitive marketplace for business and government users.”

*\*\*\*All quotations taken for the Initial Comments of the United States Department of Defense and All Other Federal Executive Agencies, filed on October 22, 2007 in Case No. 06-C-0897 before the New York Public Service Commission\*\*\**

- 
- ❑ Verizon Has Failed to Prove the Existence of Adequate Loop-Based Competition
  - ❑ The Retail Rate Increases Likely to Result from Forbearance Fail the “Public Interest” Test

**THE COMMISSION MUST  
“JUST SAY NO”**